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IN THE MATTER of the Public Inquiries Act, R.S.A. 1970 C.296 and amendments thereto

AND IN THE MATTER of the Public Inquiry by A.M. Harradence, Q.C., pursuant to Order in Council 1295/73 dated August 21, 1973 into the alleged use of excessive force by Correctional Officers upon inmates of the Calgary Correctional Institution during the evening of July 17, 1973 and any other similar instances.

P U B L I C I N Q U I R Y

Proceedings taken in the Club Room at the Jubilee Auditorium, Calgary, Alberta, commencing on the 1st day of October A.D. 1973.

Volume VIII

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I N D E X

WITNESSES

		PAGE
ALLAN MERRIAM		
Examination	by Mr. Peacock	1092
Cross-Examination	by Mr. Laing	1100
Cross-Examination	by Mr. Meurin	1109
Cross-Examination	by Mr. Stilwell	1111
Examination	by The Commissioner .	1111
Re-Cross-Examination	by Mr. Laing	1112
GUY LAWRENCE ROONEY		
Examination	by Mr. Peacock	1114
Cross-Examination	by Mr. Laing	1118
Cross-Examination	by Mr. Meurin	1119
ALEXANDER EADIE		
Examination	by Mr. Peacock	1120
Cross-Examination	by Mr. Laing	1127
Cross-Examination	by Mr. Meurin	1132
Examination	by The Commissioner .	1133
Re-Cross-Examination	by Mr. Laing	1134
WILLIAM MURRAY HOLLAND		
Examination	by Mr. Peacock	1135
ELMER HARVEY SEALOCK		
Examination	by Mr. Peacock	1140
PETER ZIACHOWSKI		
Examination	by Mr. Peacock	1146
SIMON LABROSSE		
Examination	by Mr. Peacock	1152
Cross-Examination	by Mr. Meurin	1161
DENNIS ELI ANAKA		
Examination	by Mr. Peacock	1162

EXHIBITS

52.	Document	1093
53.	Document	1109
54.	Duty Roster	1110

press conferences. I feel that the Inquiry itself, I am sure we all agree, is having an effect on the Institution itself, on all parts of the Institution, and that this should be realized by all people involved in this Inquiry, and that the statements that can be made by counsel or by anyone else involved in the Inquiry can well have an effect on the running of the Institution.

THE COMMISSIONER: Mr. Meurin?

MR. MEURIN: I can only second what Mr. Peacock has to say, sir. I believe the function of this Inquiry is to lead evidence in order that you can make whatever recommendations are necessary within the terms of reference of the Order in Council. I believe it is wrong for counsel to comment on any evidence or proposed evidence before it has been heard in this Inquiry. I believe that it is in the nature of publicity seeking. Some of the press conferences have been in the nature of head hunting. I believe that it is prejudicial to this Inquiry and that it subjects everyone to outside pressures, and certainly there are enough pressures as it now stands. It undermines the morale of the staff as a whole. I believe anyone that says that things are out of control at the Calgary Correctional Institute is only encouraging the inmates to provoke further violence, provoke

further incidents. It undermines the morale of both the senior and the other staff at the Institution, and I can only quote back to the evidence that Warden Jackson gave some time ago when he said at page 168:

> "Well, sir, I would leave that to your imagination. It's this constant bombardment all through the radio day after day after the alleged incident and before Inquiry took place is bound to reduce or to affect adversely the morale of the staff.
>
> May I add one more fact. The staff are people that live in this community, in Calgary, and they will be affected in their own communities and in their own relationships with their relatives or friends as a result of this type of publication."

Now, I believe the subject of this Inquiry is to look into whether or not there has been excessive force used by guards. I only reiterate the comment that if there is evidence that perhaps the Institution is being mismanaged that evidence should be brought forward before you if it relates to the excessive use of force or the alleged excessive use of force. If there is no such evidence I think those kind of comments are out of order.

THE COMMISSIONER: Mr. Stilwell?

MR. STILWELL: I wasn't a party to the conferences that apparently have been held this morning. Certainly I agree that the business of this Inquiry is to hear the evidence. The observations that Mr. Meurin has just made are, of course, not evidence. I have nothing further to add.

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THE COMMISSIONER: Mr. Laing.

MR. LAING: I have no comment, thank you.

THE COMMISSIONER: Well, gentlemen, I may say that I observed the news conference last night and I feel that I am duty bound to say this, that the situation is explosive. I know that not only from evidence which has been adduced here but the fact that I did attend at the Institution on Saturday evening in which the Royal Canadian Mounted Police were in attendance. I can assure you that any statements made which attempt to potentiate a situation which is already being influenced by this Inquiry may endanger lives and property. And I say this with much agonizing, Mr. Stilwell, and it is painful for me to say it, but I am surprised that a counsel of your stature, ability and experience would have made certain of the statements that you did make with respect to a certain news broadcast. I am satisfied, sir, that you certainly did that with no intent to inflame the situation, but it does concern me, and I would simply ask this, that all counsel and the news media bear in mind that we are dealing with a very serious and a very explosive situation, and that they bear that in mind in publishing any of the news that they feel they must under the circumstances. Now, if there are any

comments from that I will be glad to hear them. We shall get on with it.

MR. PEACOCK: Thank you, sir. We will continue with the evidence with respect to the incident involving the inmate Brian Nurse. We have one more inmate to hear from, but apparently he may have been delayed in the traffic, and I accordingly call Allan Merriam please.

ALLAN MERRIAM, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Merriam, you are an Assistant Deputy Warden at the Calgary Correctional Institute?

A That is correct, sir.

Q And you were so employed on July 20th, 1973?

A Yes, sir.

Q Were you on duty on the day shift that day?

A Yes, sir.

Q That goes from when?

A Eight till 4:30, sir.

Q Before we get into direct questions I wonder if you would examine this document and tell us what it is please?

A That is a day shift worksheet for July 20th.

Q Does that reflect the staff that was on duty during the day shift that day?

A From eight to 4:15, sir.

Q Was a Correctional Officer by the name of Mr.

Uitbeyerse on duty that day?

A No, sir, he was not.

Q Now, were you involved in an incident that day involving an inmate by the name of Brian Nurse?

A I was, sir.

Q And you were involved in moving this inmate from the West Wing to the cell block?

A Yes, sir.

Q Was Mr. Uitbeyerse involved in any way in that incident?

A No, sir, he was not on shift on that day -- time.

MR. PEACOCK: Perhaps we could mark that document as an exhibit, please.

THE COMMISSIONER: Next exhibit in order.

THE CLERK: That will be #52.

THE COMMISSIONER: Is there any objection?

EXHIBIT 52 - DOCUMENT

Q MR. PEACOCK: Mr. Merriam, I gather you were called to the West Wing sometime around noon of the 20th of July?

A Approximately 12:20, sir.

Q Where were you stationed prior to being called, were you in the guard room?

A I was in the front office, sir.

Q In the front office?

A Yes, sir.

Q And what happened, what happened that got you down to the West Wing?

A I was notified by a guard that there was trouble in West Wing and I was required down there. I got Mr. Labrosse and Mr. Sealock. When we were going through the gate at the cell block -- the guard room I was handed a mini streamer of gas.

Q Who handed you that?

A Mr. Eadie, sir.

THE COMMISSIONER: Mr. who?

A Eadie.

Q MR. PEACOCK: Where would this mini streamer have been prior to Mr. Eadie giving it to you?

A Be locked up in the guard room, sir.

Q I see. What position does Mr. Eadie hold?

A C.O.3.

Q He is therefore a senior officer?

A He is a chief guard, sir.

Q And therefore entitled to unlock the door and distribute things such as the mini streamer?

A Yes, sir.

Q Did you then proceed to the west wing?

A Yes, I did, sir.

Q Who went with you?

A Mr. Labrosse, Mr. Sealock, and Mr. Eadie was on his way already down there when I -- we went through.

Q When you arrived at the West Wing what did you observe?

A Nurse was standing up in the corner by the cubicle, Mr. Cater told me what had happened.

Q What did he say?

A He told me that he had ordered him to take some beads off and Nurse refused. He also ordered him something else that was on his cubicle. Nurse refused. I asked Nurse to do as he was ordered and save himself a lot of trouble.

Q Now, if I may interject, who was -- this was right beside the guard's cubicle outside the grill gate?

A Yes, outside the grill gate, right in the corner.

Q What other staff from the Institute were present at this time besides yourself and Mr. Cater?

A Mr. Cater, Mr. Eadie and Mr. Labrosse.

Q And Mr. Woods was in the cubicle?

A He was in the cubicle, sir. He was the officer in charge of the --

Q And what happened when you asked Nurse to do as he was told?

A You want his words?

Q Yes.

A He said "If you want 'em you fucking well take 'em off."

Q What did you do?

A I said "Nurse, you are on charge, you are going to the cell block until you have been seen by the Warden." I said "You can go the easy way or we will have to take you."

Q What was his reply?

A "You fucking well take me."

Q What occurred then?

A He backed up from the corner and he started to fight and kick, and one officer got a kick in the shins. I got a kick myself, and I gave him a spray with the mini streamer of gas to subdue him and stop him from getting hurt and also other officers.

Q Now, when you say he started to back into the corner and started to kick and fight, who was he kicking and fighting with?

A The two officers trying to get at him.

Q I see. Did one of the two officers who was trying to get at him hit Nurse before he took any swings or kicks?

A Not that I could see, sir.

Q When the decision was made that he would have to be taken to the guard room did somebody move forward to grab him or what happened?

A Mr. Eadie and Mr. Cater, sir. About the only two that could get in there because he was right up in the corner and they had to get in and that is -- when

he started to fight and kick that is when I gave him one spray with the mini streamer.

Q I see. What happened after you sprayed the mini streamer?

A He still fought and they had got him to -- were pulling him up to the door. When he got to the door of West Wing they all went forward and fell out into the hallway.

Q Were there some garbage cans in the area, do you recall?

A I don't recall, sir. Everything happened so quickly. We had to get him out of there on account of the other inmates were getting worked up. We had to move him fast.

Q Now, during this struggle and the time that you sprayed the mini streamer which of the guards had billy clubs?

A I only saw one with a billy club, Mr. Eadie, and it was in his pocket.

Q I see. Did you see anyone get struck with a billy club during this melee?

A No, sir, I didn't.

Q You didn't see Mr. Cater get hit?

A No, sir, I didn't.

Q And the only person that you saw that you knew had a billy club was Mr. Eadie?

A That is right.

Q Now, when you sprayed this mini streamer was someone holding onto Nurse or what were the circumstances?

A No, he was fighting in the corner, sir.

Q Was he being hit himself?

A Not that I could see. They were just fighting there. He was doing all the fighting. They were trying to grab him.

Q When you shot the mini streamer how far away from his face was it?

A Oh, approximately a foot I would say.

Q What is in the mini streamer?

A Tear gas, sir.

Q I see. Is it ordinary tear gas?

A As far as I know it is.

Q I see. And when you sprayed the mini streamer in his face what happened then?

A Kept fighting. The officers grabbed him. Started taking him out of the wing and that is -- when he got to the door he was still fighting and that is when they all went down on the floor.

Q I see.

A I was out in front of them waving at the South Wing to shut the security gates because it was right at meal time and men were coming out of the kitchen.

Q Now, when the officers fell down was there more struggling to get Nurse back on his feet?

Mr. Eadie got an armlock on his left arm.

Got him up?

A After he got out of the wing there was no more trouble.

Q Was he just walked down to the cell block?

A That is right. Mr. Eadie had an armlock on his left arm. I was just holding his right arm so he couldn't hit Mr. Eadie in case he wanted to. He walked down to the cell block. We asked him if he was going to give us any more trouble. He said no. He got undressed and went in --

Q Between the place where you all fell into the hall and the cell block was there any more scuffling or violence of any kind?

A Not after he got up on his feet there was no more scuffling.

Q What was the purpose of using the mini streamer?

A More or less subdue him, save him from injury and also save the officers from injury.

Q Did you observe Nurse after this incident? And when was the next time you saw him?

A I think the next time was when he was up for Warden's Court.

Q Do you know when that was?

A Not right offhand I don't, sir.

Q Are you aware that he was moved from the meditation

cells to the observation cells?

A I was told that, sir.

Q I see. You didn't have anything to do with that?

A Nothing to do with that, no, sir.

Q Are the observation cells on a different level than the meditation cells?

A They are on the same level, but the officer is in front of them at all times to observe.

MR. PEACOCK: Those are all the questions I have. Would you answer other counsel please.

THE COMMISSIONER: Mr. Stilwell?

MR. STILWELL: No questions.

THE COMMISSIONER: Mr. Laing?

CROSS-EXAMINATION BY MR. LAING:

Q Mr. Merriam, the night of July 20th, 1973, were you the Chief Officer in charge of things going on at the gaol?

A On the afternoon, sir.

Q On the afternoon. I am sorry.

A Right.

Q But it was Mr. Eadie who was in charge of the West Wing at that particular time?

A No, sir, he was in charge of the guard room. He was the Chief Guard, sir.

Q Now, had you had any encounters with Mr. Nurse prior to July 20th, 1973, other than in the normal course

of you being a guard and he being an inmate?

A Yes. We suspected him of glue-sniffing, which I had him up to my office. It was on a weekend. I couldn't tell you what date I smelled the glue on him, but we couldn't prove anything on him. We did find a plastic bag with glue in after they went in for lunch. I can't give you the date. It was on a weekend.

Q Did you find that in his possession?

A No, it wasn't in his possession.

Q Is that the only incident that you recall that involved Mr. Nurse prior to July 20th?

A As far as I know, yes.

Q No situation where any aggressive behaviour or violence on his behalf being characteristic?

A Not up until that day, sir.

Q Now, when you first went down to the West Wing Mr. Cater was already there, is that correct?

A That is right.

Q Was he having conversation at that time with Mr. Nurse?

A He was standing there and Nurse was standing against the wall. Mr. Cater told me what was wrong and that he wouldn't do as he was ordered to do, and then I took over from there.

Q But there was no conversation going on at the time

you arrived?

A Not that I recall.

Q Did Mr. Cater advise you as to the nature of his conversation with Nurse or just Nurse had refused to obey an order?

A That is right, and used abusive language towards an officer.

Q I see. The grill gate to the West Wing was closed at this time?

A That is right.

Q When did you get the spray can given to you?

A When I was going through the gates at the -- security gates at the guard room.

Q And that was given to you by whom?

A Mr. Eadie.

Q Do you know who had authorized Mr. Eadie to give that to you?

A No, I don't.

Q And the only person that you saw with the billy club was Mr. Eadie?

A That is right. He had it in his pocket because he was fighting with him to more or less subdue him.

Q Was that the only time you saw a billy club?

A That is right, the only time I saw a billy club was --

Q I understand Mr. Nurse is quite a small man?

A Well, pretty good --

Q About 135 pounds, five foot six inches?

A He can still put up a pretty good fight.

Q No, but he is a small man?

A I think he is over 135 pounds, if I am not mistaken.

Q Well, his size and his weight are a matter of record I believe so we won't --

A Maybe so.

Q -- get into an argument about that. There were three guards at the time, were there, trying to take Mr. Nurse out of the corner?

A There were two fighting with him in the corner.

Q That would be Mr. Eadie?

A And Mr. Cater.

Q Mr. Cater. Did you see any blows struck on Mr. Nurse by Mr. Cater?

A No, sir, I did not.

Q Did you see Mr. Eadie strike any blows?

A No, sir, I did not.

Q Now, as these gentlemen were fighting with Mr. Nurse, did Mr. Nurse fall to the floor and let his legs go out from under him?

A When they were going out into the hallway out of the West Wing door.

Q But not prior to that time?

A No, sir, because I had walked out of the wing to

ot the security gates closed out in the hallway.

Mr. Nurse would be wearing moccasin slippers at the time, would he?

I couldn't say what he was wearing.

Do inmates wear anything than --

When they go for meals, yes, they wear moccasins.

When they go out on a work party they wear boots.

But as far as you know he would have moccasins on because he had just come back from a meal?

I wouldn't say, sir. I didn't notice his boots.

While you were present in the West Wing was Mr. Nurse advised why he was being taken from the West Wing?

Yes, he was.

By whom?

I told him myself.

What did you tell him?

I asked him why he didn't do as he was told and save himself a lot of trouble. And I just stated a few minutes ago what he said to me.

And you were only referring to what Mr. Cater had told you in previous conversation?

That is right.

Did you tell him where he was being taken?

Yes, sir.

When you first saw Mr. Nurse in the West Wing were

his eyes black?

No, sir.

Were they red and puffy?

I couldn't tell you. I didn't pay that much attention to him. Everything happened so fast.

You were fairly close to him, were you not?

I was close. I was behind the other officers, yes.

Did he have any cuts on him?

Not that I noticed.

Any bleeding anywhere that you noticed?

A Not that I noticed.

Q Did you see him after he left the West Wing and after he and the officers and fallen to the ground just outside the West Wing?

A I helped escort him to the cell block.

Q Did you notice any swelling, black eyes, cuts or bleeding?

A No, sir. I noticed him crying from the tear gas.

Q Nothing remarkable other than that?

A That is all, sir.

Q I'm interested to know whether there is any general policy at the gaol as to when billy clubs, gas or group force by guards will be used?

A We treat each situation differently. We don't know what we are running into when we go into one of these wings when you are notified there is a dis-

turbance.

Is there any restriction or restraint placed upon you as a guard as to the use of gas or billy clubs?

A We don't use gas that much. Very seldom. I have used it about three times in eleven years or four times in eleven years.

Q Is that because of your discretion or because of --

A Mostly we can talk them out of it and get them to go.

Q Do you and the other guards and perhaps the Warden have discussions from time to time as to when these particular items will be used and when they will not be used?

A No, sir. At our own discretion, sir.

Q Completely up to your own discretion?

A If we have to use it.

Q And is that the same for officers of every class within the gaol?

A No, sir.

Q Could you tell me which officers are entitled to use their discretion and which ones are required to follow orders?

A If a C.O.2 or a C.O.3 is in charge of the guard room then he can use it at his discretion. But there is always an Assistant Deputy Warden and C.O.3 -- or C.O.3 on duty. At least there is supposed to be.

It is laid on by Edmonton.

So the officers of lower rank would have to follow orders given by the Assistant Deputy or person in charge of the guard room?

A That is right.

Q Did you see Mr. Nurse the day he was brought to Warden's Court?

A Yes, sir, I was there, sir.

Q Were his eyes blackened on that date?

A I can't recall if they were, sir.

Q How much did you have to do with him on that day?

A I just brought him into the office before the Warden.

Q Is it the type of thing you would have noticed had his eyes been black?

A I would say so, if they were real black I would have noticed them.

Q You were with him long enough that you would have noticed them had they been black at that time?

A I think so, I would have noticed them if they were real black.

Q When you spoke with Mr. Nurse in the West Wing when you first arrived did he make any suggestion to you that he would take the beads off if he could go back and put them on his bed?

A No, he just said he wouldn't take them off.

Q Just a complete refusal to follow your order?

That is right.

No reference whatsoever to going back to his bed or --

Not to me.

Did Mr. Cater advise you of that type of a conversation having gone on between him and Mr. Nurse?

No, sir.

So your decision as to what action you would take at that particular time was based entirely upon what Mr. Cater had told you of the nature of the conversation?

A I told Nurse myself to remove them and he refused. And by that time all the other inmates in the wing were getting uptight, egging him on, calling us all kinds of names. We had to get him out of there.

Q Were there any other officers that would have been within earshot of any conversation between Mr. Cater and Mr. Nurse?

A I couldn't say.

Q Well, who was in the cubicle area?

A Mr. Woods, he was in the cubicle. Whether he heard it I couldn't say.

Q Was he in a position where he may have been able to hear a conversation?

A If he was paying attention to what was going on, yes, sir.

Was there anybody else at that time, sir?

A Not that I recall.

Mr. Eadie was there before you arrived?

A He had just arrived when we got in there too.

MR. LAING: I have no further questions, thank you.

THE COMMISSIONER: Mr. Meurin.

CROSS-EXAMINATION BY MR. MEURIN:

Sir, you have indicated that you were in Warden's Court when Nurse was brought in after this incident?

A That is right, sir.

But you don't recall the date?

A No, sir, I don't.

I'm showing you a xerox copy of a form of violation, Correctional Institution Regulations. Would you tell me what the date of that is?

A It is dated July -- pardon me, 23rd of July when the hearing was, sir.

So that would have been approximately three days after the incident?

Three days after, yes, sir.

MR. MEURIN: Might that be entered as an exhibit.

THE COMMISSIONER: Any objection?

THE CLERK: 53.

EXHIBIT 53 - DOCUMENT

MR. MEURIN: And I am also showing you a duty roster for July 20th, 1973. At the top it is twelve midnight to eight A.M. shift. Is that signed by yourself?

A That is right. This was made out the day before, on the 19th, sir.

Q Does that show that Mr. Uitbeyerse was on the midnight to eight A.M. shift of July 20th, 1973?

A He was the officer in the cell block for the twelve midnight to eight A.M. shift, sir.

Q So he wouldn't be on the West Wing?

A He would be home sleeping when this happened, sir.

MR. MEURIN: Might that be the next exhibit.

THE COMMISSIONER: Any objection?

THE CLERK: Exhibit 54.

EXHIBIT 54 - DUTY ROSTER

Q MR. MEURIN: Sir, there has been evidence to the effect that Nurse was taken by Correctional Officers who had a hold of all of his limbs. I am paraphrasing their evidence. But it was to the effect that they were carrying him out by his arms and his legs and while he was in a prone position like this you squirted him with the gas. What is your reaction?

A That is not correct, sir. He was standing in the

corner when I squirted him with tear gas.

Q Were you struck at any time?

A I had a kick in the leg, yes.

Q What kind of language were the inmates using to egg on Nurse?

A They were calling us all different kinds of names. If you want me to tell you some of what I heard?

THE COMMISSIONER: I think it would be something less than complimentary.

A Yes, it was, sir.

MR. MEURIN: I have no further questions, sir.

MR. STILWELL: May I ask a question?

CROSS-EXAMINATION BY MR. STILWELL:

Q I have been informed that tear gas itself will create a condition similar to a black eye. Is that within your experience?

A I wouldn't know, sir. I have had a lot to do with tear gas. I instructed in the army on tear gas at Camp Borden, and I have seen it when they came out of the tear gas room rubbing their eyes.

MR. STILWELL: Thank you.

EXAMINATION BY THE COMMISSIONER:

Q Mr. Merriam, are custodial officers given any instructions with respect to physical holdings to take a man? Is there any course of training that you give custodial

officers with respect to --

I think there is a course in Edmonton, sir, that they go up on, all new Correctional Officers. I think they are instructed. I wouldn't say for sure,, but I think they are instructed.

Do you know if any of the officers who were involved in this matter had such instructions?

A I couldn't tell you, sir.

Q Have you had such instruction?

A I have had instructions in the army.

Q In the army. But not as a Correctional Officer?

A No, sir. I just use my own discretion.

Q But there are certain holds?

A We usually try to get a armlock on them, which is the best one to get on them, sir.

Q From what I take it Correctional Officers have not been instructed how to obtain a hold, how to apply it or how to use it. Any questions arising out of that?

MR. LAING: I have one further question. Doesn't arise out of that, but if I may ask it, sir?

RE-CROSS-EXAMINATION BY MR. LAING:

Q Mr. Merriam, I want to pose just a hypothetical question to you if I may. If you had gone to the West Wing and been told that Mr. Cater had asked Nurse to take the beads off and Nurse had said

"I'll take them off but I want to go back to my bed so that they don't get lost", would you have considered that a direct refusal of an order?

A If he was given an order to take them off, yes.

Q A request to go back to his bed to put them there would have been an unreasonable request on Nurse's part?

A I also told Nurse to take them off and he refused me.

Q I want you to answer my question if you will. I don't think it is an improper question. All I want to know is whether the request by Nurse if he had asked permission to take them off when he got back to his bed so they wouldn't get lost would that have been an unreasonable request for him to make?

A I don't know, I wasn't there to hear it.

Q You are not prepared to answer my question on that?

A If I had been there and he had asked me that then I would answer your question.

THE COMMISSIONER: I appreciate the point of your question, Mr. Laing, but you are asking this officer to put himself in a position and circumstances with which he is not familiar or was not aware of at the time. I can certainly see where it might under certain circumstances be unreasonable and under other

circumstances it might well be reasonable. I think the question is probably impossible for him to answer under the circumstances.

MR. LAING: That is fine, sir, thank you.

THE COMMISSIONER: Thank you, Mr. Merriam.

A May I sit in this --

THE COMMISSIONER: Do you intend to call Mr. Merriam?

MR. PEACOCK: Again I am faced with the problem I have been faced with right along, and that is how the general part of our Inquiry is going to go, and I would think if we are going to be inquiring into general conditions at the Institute that Mr. Merriam is going to be a very vital witness, and I leave it to your discretion as to whether --

THE COMMISSIONER: Mr. Merriam, I think I will have to err on the side of caution.

A Thank you, sir.

MR. PEACOCK: Thank you, sir.

(Witness retires)

MR. PEACOCK: Mr. Clerk, will you call Guy Rooney, please.

GUY LAWRENCE ROONEY, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Rooney, you have been here and given evidence

before, have you?

A Yes.

Q You were -- you are an inmate of the Calgary Correctional Institute?

A Yes, right.

Q You were housed in the West Wing on July 20th, 1973?

A Yes, I was.

Q Do you recall an incident that day involving an inmate by the name of Brian Nurse?

A Yes, I do.

Q Would you tell us what you observed that day in that regard?

A It was dinnertime I think.

THE COMMISSIONER: Would you speak up? I am having trouble. That may be an infirmity, but --

A I came back from dinner this day and I seen Brian Nurse by the cubicle, by the guard's cubicle. With how many numbers of officers around I didn't know. I went into the wing and the gate closed. The gate between the cubicle and the room closed. I seen Brian in the corner and he fell on the floor. There were guards hitting him.

Q Did you hear any of the discussion that Nurse was having with the guards before this scuffle broke out?

A Yes, something about a sign on his locker, "What is

this"?

Q Did you hear anything with respect to beads on his wrist?

A No.

Q All right. Now, what happened? You say you saw him in the corner and you saw some guards hitting him?

A Yes.

Q Did you observe what he was doing?

A He was yelling. He was saying something.

Q Did you see him swinging his arms or kicking his feet or anything like that?

A Not that I can remember.

Q Did you observe any of the guards with any clubs?

A I didn't see any.

Q Where were you standing when this was going on?

A Right by one of the cubicles. Right by one of the cubicles.

Q Is that one of the lockers?

A No.

THE COMMISSIONER: Guard's cubicle?

A No, inmates' cubicle along the wall.

Q MR. PEACOCK: How far would that be from the grill gate to the West Wing?

A Four feet, three feet.

Q So you were right essentially at the grill gate?

Did you see anyone use any gas on this inmate?

A No.

Q You just saw the scuffle going on? Did you see anyone punch Nurse?

A I seen guards hitting Nurse. Which ones I don't know.

Q How were they hitting him?

A With his fists.

Q Do you know which guard that was?

A No. I'd only been in the West Wing three weeks. Didn't know the guards.

Q Did you observe the whole pile of guards and Nurse fall to the floor?

A Yes.

Q And were they all in kind of a jumble?

A Confused. Nurse was anyway.

Q I am sorry?

A Nurse was anyway confused.

Q And how many guards did you observe there that day?

A Three, four, four.

Q I see. Did you see Nurse after this incident?

A Yes, I seen him in OB cells, "C" Range.

Q How many days after this would that have been?

A Could have been a week or less.

Q A week or less. Did you observe anything with respect to his physical condition?

A I didn't see any bruises or anything.

Q Did you notice his eyes were black or anything like that?

A His eyes are pretty dark.

Q Pardon me?

A His eyes are pretty dark anyway.

Q They are pretty dark anyway. Did you notice that they were any darker when you saw him a few days after the incident?

A No, I just took a glance at him, and I was told --

THE COMMISSIONER: Pardon?

A Just took a glance at him and I was told to keep out of --

MR. PEACOCK: By whom?

A One of the guards on duty.

Q He was in a cell, was he?

A Yes, OB cell.

Q And you were passing his cell?

A Yes.

Q And when you glanced at him did you notice anything by way of bruises on his face or black eyes or anything?

A No. No, not that I noticed.

MR. PEACOCK: Would you answer other counsel please.

CROSS-EXAMINATION BY MR. LAING:

Q When you saw the scuffle in the corner by the cubicle in the West Wing was Mr. Nurse on his feet or was he on the floor?

A For a time he was on his feet. He was back in the corner.

Q Did he then drop to the floor while he was still in that corner?

A He was on the floor. There is a laundry pile in the corner. He was there. He was on that.

Q That is where the scuffle was taking place?

A There, and there was the cubicle on the way out.

Q While he was still in the corner where the scuffle began, you say he was on his feet to begin with and then he dropped to the floor during the scuffle but while he was still in the corner? And was he then carried bodily out of that area by the guards?

A Yes.

Q Was Mr. Merriam one of the guards?

A I couldn't say for sure.

MR. LAING: I have no further questions, thank you.

THE COMMISSIONER: Mr. Meurin?

CROSS-EXAMINATION BY MR. MEURIN:

Q And when you said you were standing by the cubicles, did you mean the urinals near the front of the --

A Yes.

Q -- West Wing?

MR. MEURIN: No further questions.

THE COMMISSIONER: Thank you, Mr. Rooney.

MR. PEACOCK: Thanks, Mr. Rooney.

(Witness retires)

(Adjournment)

MR. PEACOCK: Would you call Alexander Eadie, please.

ALEXANDER EADIE, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Eadie, you are a Correctional Officer, sir, at Calgary Correctional Institute?

A Right.

Q You were so employed on July 20th, 1973?

A That is right, sir.

Q And I gather you were in charge of the guard room that day?

A That is correct, sir.

Q That would mean that you would be in charge of the general operation of the Institute during your shift, is that correct?

A That is right.

Q On that date were you called into an incident involving an inmate by the name of Brian Nurse?

A That is correct, sir.

Q Would you tell us what happened that got you involved in this incident?

A Well, I received a call from the officer in the West Wing, sir.

Q Who was that? Do you know who that was?

A I believe it was Mr. Cater, sir. To come down to the West Wing and bring the gas and some extra help as there was a problem in the West Wing.

Q Did he tell you what kind of a problem he was having?

A No, he did not.

Q What did you do?

A Immediately I called the staff lounge where I knew there were some officers there having lunch. I called the staff lounge to call for some extra help to come to the guard room immediately.

Q And who arrived?

A Mr. Merriam and Mr. Labrosse, I believe Mr. Holland too, sir, arrived at the guard room at the time. And I met them at the gate and I gave Mr. Merriam a miniature of gas spray and we headed for the West Wing, sir.

Q And when you got there were there other guards present?

A Yes, sir. There was Mr. Woods who was in charge of the Wing and Mr. Cater who was in the wing. I think that is all I remember, sir, being in the wing at the time.

Q All right. What happened when you got there, what

did you see?

A When I got there, sir, as we entered the door Brian Nurse was standing there to my right against the north wall. Mr. Cater was standing in front of the guard's cubicle and Mr. Cater informed Mr. Merriam that Brian Nurse was refusing to move out of the wing, sir.

Q At this time did you observe what the other inmates in the wing were doing?

A Yes, sir.

Q What were they doing?

A They were all shouting and hollering obscenities at the staff.

Q Were they in their beds?

A No, sir, all standing around. There were quite a few down by the grill gate which separates the guard's cubicle from the dormitory.

Q Now, when Mr. Cater advised Mr. Merriam of this problem what happened then? Would you just recount what you recall happening?

A Yes, sir. I recollect that Mr. Merriam cautioned Brian Nurse that he had been charged by Mr. Cater and he would be removed from the cell block, the fact he was on charge.

Q What did Brian Nurse say?

A Brian Nurse replied "If you want to take me out

of here -- my apologies to the ladies in the Court Room -- you will need more fucking screws here."

Q What happened then?

A Mr. Merriam again cautioned him to be sensible about the whole thing, to come quietly, and Brian Nurse replied "Fuck off".

Q What occurred then?

A Then I myself cautioned Brian Nurse that he was going to be removed from the cell block. I told him "I will ask you twice to walk out of the wing and if you don't walk out after the second time I ask you we will remove you forcibly if we have to."

Q What was his reply?

A His reply again was "Fuck off".

Q What occurred then?

A Then I went to approach -- I was standing there at this time directly in front of Brian Nurse. I went to approach him to grab him by the front of the shirt and he went to punch me in the face and I ducked down between his shoulder and his mid-stomach against the wall.

Q Did you observe Mr. Cater punch Brian Nurse at this time?

A No, sir.

Q Did you observe Mr. Cater punch Brian Nurse at any time?

A No, sir.

Q Did you observe any of the guards punching Mr. Nurse in the stomach or the solar plexus?

A No, sir.

Q If I may just back track for a minute. When you left the guard room and handed Mr. Merriam the mini streamer --

A Yes, sir.

Q -- did you issue a billy club to any of the guards?

A No, sir. I had a billy club myself in my pocket.

Q I see. Did any of the other guards have a billy club?

A No, sir.

Q Did you remove your billy club during the scuffle with Brian Nurse?

A No, sir.

Q If you didn't remove it I take it you didn't strike him with it?

A No, I did not, sir.

Q Did you observe any of the other guards during the scuffle with Brian Nurse strike Brian Nurse or hit Mr. Cater with a billy club?

A Would you repeat that question, sir?

Q Did you observe anyone of the other guards striking Brian Nurse with a billy club?

A No, sir.

Q Did you observe any one of the other guards strike

Mr. Cater with a billy club?

A No, sir.

Q All right now, when you -- you say that as you approached Nurse he took a swing at you?

A Yes, sir.

Q Had he been hit by any of the guards prior to that?

A No, sir. This was the first action was involved in the incident.

Q And you got a bear hug on him, did you?

A Yes, sir.

Q What did the other guards do?

A Well, the other guards approached him from either side and then become involved and I didn't see who was with me at the time. I believe he went down at that time and then he got up again and then he was taken out of the wing outside the dormitory into the main hall. Where he went down again, sir.

Q Now, did any of the guards or did Mr. Merriam use this mini streamer?

A Yes, sir. I was at that time involved in trying to obtain an armlock on Brian Nurse. Due to the fact he was swinging wildly and kicking I was trying to obtain an armlock, and this Mr. Merriam used the mini streamer.

Q Did any of the mini spray hit you?

A Not directly, sir. I got the side effects a little

bit.

Q After Mr. Merriam shot the mini streamer what did Nurse do?

A Well, Nurse went to cover his face I believe and at that time I got the left arm and obtained an armlock on him and at that time Mr. Merriam grabbed the right arm and he, inmate Brian, then submitted. He quit kicking and struggling.

Q Did you then accompany him down to the cell block?

A Yes, sir, I accompanied him down to the cell block in that position with the left armlock and Mr. Merriam had his right arm. I believe it was just straight out something to this effect, and he walked very quietly to the cell block.

Q Is it your evidence today that you didn't see any of the guards strike Brian Nurse?

A No, sir, I did not see anybody strike Brian Nurse.

Q Did you strike him?

A No, sir.

Q After you started to escort him down the hall with this armlock on him did he offer any further resistance?

A No, he did not.

Q When this scuffle was going on were the other inmates in the West Wing saying anything?

A While the scuffle was going on? Well, there wasn't

too much scuffle in the wing itself, sir. It was mostly out in the hallway where doing all the kicking and struggling.

Q Did you hear any of the inmates in the West Wing holler anything while this was going on?

A Oh, yes, there was quite a lot of obscenities.

Q Where were they yelling?

A Again my apologies to the ladies in the Court Room, sir. Yelling "Go ahead, Brian boy, put the fucking boots to the screws, show them you are not scared of them."

Q Did they continue as well to call the staff names?

A Oh, yes, sir.

MR. PEACOCK: Those are all the questions I have. Would you answer other counsel, please.

MR. STILWELL: No questions.

THE COMMISSIONER: Mr. Laing?

CROSS-EXAMINATION BY MR. LAING:

Q Mr. Eadie, when you grabbed Nurse around the waist, put your shoulder into his chest, did he fall to the floor at that time?

A I think so. It was after I put the bear hug around his midriff and the two officers approached from either side I think it was then, sir, that he slipped to the floor, possibly by the overweight of the officers.

Q Was it immediately after that that Mr. Merriam

sprayed him in the face with the aerosol can?

A I think it was out in the hallway, sir. I'm not too sure now.

Q Let's sort of trace these incidents just one by one. You put your arms around Mr. Nurse and you restrained him in the corner?

A Yes, sir.

Q The other two guards who were with you got hold of his arms at that point, did they, and moved him out from the corner where he was?

A I didn't see them get hold of his arms, sir. My position, naturally my head was down, but I could see two officers approaching from either side. I don't know how they got him.

Q You moved him out from the corner at that time?

A Yes, sir.

Q And you moved him out into the hallway leaving the West Wing?

A Yes, sir.

Q And you believe it was at that time Mr. Merriam sprayed Nurse?

A I believe so, sir. I'm not too positive for sure.

Q Did the guards and Nurse fall to the floor some time between the corner and the hallway?

A Yeah, I believe they fell down just before left the door, sir, they fell down again, and they got up and out through the door into the hallway, and

then they fell down again, sir, in the hallway.

Q Would you recall whether the spraying took place prior to the guards and Nurse falling onto the floor or afterwards?

A I believe the spraying was when Nurse was on the floor, sir, kicking and struggling.

Q When all the guards and he went down or just when he went down the first time in the corner?

A I think it was outside, sir, in the corridor.

Q You think it was outside in the hallway?

A I think so, sir.

Q Did the billy club remain in your pocket throughout this entire incident?

A Yes, sir.

Q You never removed it at all?

A No, sir.

Q And as far as you know no one else had a billy club?

A I know, sir, for sure because I issue them all.

Q What was Nurse wearing on his feet?

A I didn't notice what was on his feet, sir.

Q You wouldn't know whether it was boots or slippers at that point?

A No, sir.

Q When you first saw Nurse in the corner of the West Wing did you notice whether his eyes were black and swollen?

A No, they weren't.

Q They were not?

A No.

Q Was he bleeding anywhere?

A Not that I could see, sir, no.

Q Any cuts on his body that you noticed?

A On his body?

Q Well, on his face.

A Well, nothing on his face, sir, no.

Q And you observed him from time to time from the corner out into the hallway I would imagine?

A Yes, sir.

Q And any of that time did you see any bruising, swelling, cuts, bleeding on him at all?

A No, sir.

Q Did you have occasion to see him while he was in the cell block after the incident?

A After the incident, sir?

Q Yes.

A No, sir.

Q Did you see him the day he was taken up to Warden's Court?

A No, sir.

Q How long have you been a guard at the gaol, sir?

A I started at the Calgary Institution on the 12th of March, 1958, sir.

Q Had you been an officer, Correctional Officer, anywhere else prior to that date?

A Yes, sir, in Burwash Ontario.

Q And at the time you came to the Calgary Correctional Institute were you given any instruction as to how to meet situations, when you would use billy clubs, when you would use gas, when you would not use these two things?

A We had a course, sir, or I had a course with Calgary City Police on riot and crowd control.

Q There was no specific instruction given to you as a gaol guard as to when you would use billy clubs or when you would use tear gas?

A No, sir.

Q And there was no policy that you were aware of at the gaol as to what sort of situation would warrant the use of these two items?

A No, sir.

Q Did Mr. Cater request you to bring the billy club and the gas down to the West Wing?

A No, sir. Mr. Cater requested to bring gas and some officers and some help.

Q It was your decision to put the billy club in your pocket?

A Yes, sir.

Q In your experience at Calgary Correctional Institute have you ever had occasion to use gas?

A No, sir.

Q Did you ever use gas in your experience in Burwash,

Ontario?

A No, sir.

Q Other than this incident have others used gas in your presence, other officers used gas on inmates in your presence at Calgary Correctional Institute?

A Yes, Mr. Merriam used gas in my presence, sir.

Q On this occasion?

A On this occasion.

Q On any other occasion has any officer ever used gas in your presence?

A No, sir.

Q I take it then that the use of gas is a rather extraordinary remedy for a situation?

A Depending on the situation, sir, yes.

Q When the guards and Nurse fell to the floor somewhere between the corner of the West Wing and the hallway did you notice anybody hitting Mr. Nurse at all on the back of the head?

MR. LAING: I have no further questions, thank you.

CROSS-EXAMINATION BY MR. MEURIN:

Q Sir, would there be occasions in which mini streamers or gas would be carried by an officer but not used? In other words, they would be taken as a precaution in the same way that a policeman carries a pistol but he doesn't necessarily use it?

A Yes, sir, many times.

Q Why were you attempting to place an armlock on Nurse?

A Rather to overpower him and save himself from any damage or any inflicted injuries.

MR. MEURIN: No further questions.

EXAMINATION BY THE COMMISSIONER:

Q Mr. Eadie, you say you had a course in riot and crowd control. What year was it?

A I believe it was about three years ago, sir.

Q In that course are you given instruction in any specific holds, as to when to take a person, force them to come along?

A You are shown a couple of holds.

Q Were you on this control course?

A Yes, sir.

Q That was three years ago?

A About three years ago, sir.

Q Was that the only course you had with respect to come-on holds or holds?

A In combat, sir, in the forces.

Q In the U.K.?

A Yes, sir.

Q Nothing in Canada?

A Nothing in Canada, sir.

Q You are a C.O.3, are you?

A Yes.

Q That makes you a Senior Correctional Officer?

A Yes, sir.

Q I would like your opinion, if I may, Mr. Eadie. Would instruction in the use of these holds to all officers be of assistance?

A They should be very valuable, sir.

THE COMMISSIONER: Anything arising out of that?

RE-CROSS-EXAMINATION BY MR. LAING:

Q One queston, sir, if I may. Which officers had hold of Mr. Nurse at the time Mr. Merriam used the spray?

A I can't say, sir. I had hold of him myself and I can't remember who the other officer was, sir.

Q It was more than one officer who had hold of Mr. Nurse at the time the spray was used?

A Was only two of us, sir, I believe.

THE COMMISSIONER: Anything further, gentlemen? Thank you, Mr. Eadie.

MR. PEACOCK: Thank you, Mr. Eadie.

(Witness retires)

MR. PEACOCK: I am wondering if perhaps we shouldn't adjourn for the noon hour break. I have two witnesses here, but I doubt we will finish with them by twelve o'clock. We can resume again at 1:30.

THE COMMISSIONER: 1:30. 1:30, gentlemen.

(Hearing adjourned)

(Please go to page 1135)

OCTOBER 24th, 1973

DEPOSITIONS TAKEN AT 1:30 P.M.

MISS GOTTSELIG: Mr. Commissioner, my name is Cheryll Gottselig. I am representing the inmates this afternoon.

THE COMMISSIONER: Thank you very much.

MR. PEACOCK: Mr. Commissioner, with respect to this incident we have five more staff of the institute to call. We actually have six, one of them, I think a key witness, Mr. Wood, who was in charge of the cubicle in the West Wing on the night in question is apparently bed ridden with a slipped disc and has been ordered by his doctor not to move. I propose to call him but it would appear we are going to have to call him later in the inquiry, just bear in mind that he will be called later.

THE COMMISSIONER: I take it then the evidence on this incident will not be closed until we have heard him?

MR. PEACOCK: That's correct.

THE COMMISSIONER: Thank you.

MR. PEACOCK: Would you call Mr. Holland, please.

WILLIAM MURRAY HOLLAND,

having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Holland, you are an employee at the Calgary Correctional

Institute?

A Yes, sir.

Q What is your position?

A Assistant Recreation Therapist.

Q Were you on duty on July 20th, 1973?

A Yes, sir.

Q Did you become involved in an incident involving an inmate by the name of Brian Nurse that day?

A Yes, sir.

Q Would you tell how you became involved in that incident?

A I was standing in the guard room waiting to go on duty and there was a call came down from the West Wing that they needed help in the West Wing. I proceeded down with Mr. Eadie and Mr. Lebrosse and myself and Mr. Merriam.

Q And you arrived at the area outside the guard's cubicle?

A Yes, sir.

Q Now before you went down, were you issued with a billy club or any weapon of any sort?

A No, sir.

Q Did you see any of the other guard's that you went down with have any billy clubs or other weapons?

A I believe Mr. Merriam had a small tear gas container and Mr. Eadie had a billy.

Q Did you notice if any of the other guard's had a billy at the time?

A No, sir.

Q And you didn't have a billy club?

A No, sir.

Q I take it you were going onduty in the gymnasium that day?

A Yes, sir.

Q When you got to the guard's cubicle, what other staff of the institute were there?

A Mr. Cater was standing talking to Nurse.

Q Were there any other members of the staff of the institute there at that time?

A Mr. Woods who was in charge of the wing was standing in the guard's cubicle.

Q I see. Now what happened when you got there? Would you just relay what you recall?

A I was standing next to Mr. Cater as he was talking to, trying to convince Nurse to take the beads off and he was getting a lot of static from Nurse at the time. Mr. Merriam come up and spoke to Nurse and he himself tried to convince Nurse to take these off, that he was in enough trouble as it was.

Q What did Nurse do?

A Nurse replied in a very vulgar way to him.

Q Did he tell him he would take them off when he got back to his bed?

A I believe that's what he said to start with.

Q Alright, what happened then?

A Mr. Eadie was standing there and Mr. Merriam told Nurse, he said "You consider yourself on charge. You are going to

segregation. You can either come the easy way or the hard way" and Nurse replied in another vulgar way.

Q What did he say?

A Is it permissable, sir?

THE COMMISSIONER: Yes.

A He said that "There isn't enough fucking screws around here to take me".

Q What happened then?

A He proceeded to make a move as if he was going to take a swing at Mr. Cater. Mr. Merriam gave him a short burst of the tear gas and Mr. Cater grabbed one arm and there was a scuffle and they got him as far as the door going out, leading into the hallway and then they lost their balance and fell.

Q Did you see Mr. Cater punch inmate Nurse -

A No, sir.

Q - before he was shot with the tear gas?

A No, sir.

Q Did you see any of the guard's strike Mr. Nurse at that time?

A No, sir.

Q Did you see anybody use a billy club?

A No, sir.

Q When they fell on the floor, were they in the doorway leading out to the hall?

A Yes, sir, they were.

Q What happened then?

A Nurse was kicking and Mr. Eadie was trying to get a choke hold on him and Mr. Cater had one arm.

Q What were you doing?

A I was standing at the guard's cubicle, sir.

Q Did you get involved in the melee at all?

A No, sir.

Q Did they get Nurse off the floor after they had all fallen?

A Yes, sir, they did.

Q And what happened then?

A The door was closed, sir.

Q Were they out in the hall by then?

A Yes, sir, they were out in the hall.

Q Did you remain down there or did you go back to the gym?

A No, I remained there for about 15, 20 minutes to see if there was any more trouble and then I went down to the gym.

Q Was there any more trouble?

A No, there was a lot of noise and hollering right at the grill gate, sir. There was very abusive language and that being used.

MR. PEACOCK: I see. Those are all the questions I have. Would you answer other counsel, please.

THE COMMISSIONER: Miss Gottselig?

MISS GOTTSELIG: No questions.

MR. MEURIN: No questions.

THE COMMISSIONER: What did you say your position is in the jail, sir?

A Assistant Recreation Therapist, sir.

THE COMMISSIONER: Are you a Correction Officer?

A I was up till three years ago.

THE COMMISSIONER: And then you retired from that position and then you became recreation supervisor?

A Yes, sir.

THE COMMISSIONER: Would that be anything to do with gymnastics or would you simply supervise sports?

A Gymnastics and sports, sir.

THE COMMISSIONER: Thank you very much.

A Is it permissible to sit in and listen, sir?

THE COMMISSIONER: Will you be recalling him?

MR. PEACOCK: I don't think so.

THE COMMISSIONER: Any objection? You may remain.

A Thank you, sir.

MR. PEACOCK: Thank you, Mr. Holland.

(Witness retires)

MR. PEACOCK: Would you call Mr. Sealock, please.

ELMER HARVEY SEALOCK,

having first been duly sworn, examined by Mr. Peacock,

testified as follows:

Q Mr. Sealock, you are a Correction Officer one at the Calgary Correctional Institute?

A That's right, sir.

Q And how long have you been employed at the institute?

A Since September 1961.

Q And were you so employed on July 20th, 1973?

A I was, sir.

Q And on that date were you on duty during the day shift?

A I was.

Q And what were your duties to be that day?

A Admittance Control. In the back end of the Admittance Control.

Q Did you have occasion on that day to become involved in an incident involving an inmate by the name of Brian Nurse?

A I did.

Q How did you come to be involved?

A On the way back to Admittance Control after lunch I was called at the guard room by Mr. Merriam. There was a rumpus going in the West Wing. He said "Come with me". I went with him.

Q Were you issued any weapon or billy clubs or gas equipment at that time?

A No, sir.

Q Did you have a billy club at any time during the incident?

A No, sir.

Q You went with Mr. Merriam down to the West Wing?

A Right.

Q Who went with you?

A I couldn't name the guards that went, sir. I know there was several of us.

Q When you got down to the West Wing beside the guard's cubicle, what did you observe?

A The inmate, named inmate was in the corner by the guard's cubicle inside the main door of the West Wing and Mr. Cater was talking to him and asked him to come with him and he refused and used a few abusive words and he made a motion as if he was going to hit Mr. Cater and there was three of us crowded in to contain him. At this time -

Q Who were the three?

A Mr. Cater and Mr. Eadie and myself.

Q What happened then?

A Three of us pushed in to contain him. He went, made a motion as to hit Mr. Cater and we crowded in to hold him from hitting anyone.

Q Did you grab a hold of him?

A I helped push him back against the wall.

Q During this period did you observe Mr. Cater punch the inmate?

A I did not, sir.

Q You didn't see him hit him in the stomach or the solar plexus?

A No, sir, I did not.

Q Did you see him punch him in the face?

A No, sir.

Q Did you see Mr. Eadie strike the inmate?

A No, sir, I did not.

Q Well, you backed him into a corner. What happened there?

A Grabbed a hold of him and took him out the main door of the West Wing out in the hallway.

Q Did anyone of the guards use a billy club that you saw?

A I did not see, sir.

Q Now when you put him into the corner, did you have a hold of him after that?

A Not after I got a hold of him to put him out the door, sir, grabbed a hold of his shirt is all.

Q Did you see anyone of the staff use a mini streamer on the inmate Nurse at that time?

A No, I did not.

Q Did you smell any gas?

A No, sir.

Q After you had him in the corner and got him out to the door, did the guards and Nurse go into the hallway?

A Just outside the main door of the West Wing, yes.

Q Was the door closed then?

A It was closed after they got him out, yes.

Q Are you aware that a ruckus continued in the hallway?

A Well, at that time the staff, inmate staff in the kitchen were changing their shift and they were coming out of

the kitchen door down the hallway and I stood up and said "You fellows get back to your jobs or go back to your wing, one or the other. Get out of here." At that time the inmate was contained so I left to go back to Admittance Control.

Q You didn't see Mr. Merriam use the mini streamer that he had with him?

A No, sir.

Q During this altercation that took place between the guard's and Nurse, did you see Nurse strike any of the guards?

A He was kicking, cursing and swinging as much as he could until his arms were -

Q Did you see any of the guards strike Nurse?

A No, sir.

Q Did you see Nurse after this incident?

A No, sir, I haven't seen him.

Q You then went back to your position for the shift?

A That's right, sir.

Q Was there any further problems to your knowledge that day from the West Wing?

A Not to my knowledge, sir.

MR. PEACOCK: Thank you. Would you answer other counsel, please.

MR. STILWELL: No questions.

MISS GOTTSELIG: No questions.

MR. MEURIN: No questions.

THE COMMISSIONER: Tell me, were you one of the three that moved in on Nurse?

A Yes.

THE COMMISSIONER: Who were the other two with you?

A Mr. Eadie and Mr. Cater.

THE COMMISSIONER: And Mr. Cater?

A Yes, sir.

THE COMMISSIONER: Where was Mr.Merriam at this time?

A This I couldn't tell you what position he was standing, sir.

THE COMMISSIONER: Did you see what part he took in the altercation with Nurse?

A In the scuffle that ensued I would say he was -

THE COMMISSIONER: No, not - what you know, sir.

A Well -

THE COMMISSIONER: Do you know? If you don't know, tell me.

A I don't know whether he actually grabbed a hold of the inmate or not, sir.

THE COMMISSIONER: No. Thank you. Anything arising out of that, gentlemen or Miss Gottselig? Thank you.

MR. PEACOCK: Thank you, Mr. Sealock.

(Witness retires)

MR. PEACOCK: Would you call Peter Ziachowski, please.

PETER ZIACHOWSKI, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Ziachowski, are you a member of the staff at the Calgary Correctional Institute?

A I beg your pardon?

Q Are you employed at the Calgary Correctional Institute?

A Yes, sir.

Q What is your position there?

A Correction Officer.

Q What number? One, two or three?

A One.

Q Were you on duty on July 20th, 1973?

A Yes, sir.

Q Did you have occasion to become involved in an incident involving an inmate by the name of Brian Nurse?

A Yes, sir.

Q How did you become involved in this incident?

A When I was coming off duty in the dining room about 12:30 approaching the West Wing, I seen some squabble down there.

Q Down where?

A In the West Wing and Mr. Cater says "Ziachowski, you go down and get, go to the guard room and get Mr. Eadie to come up to the West Wing". That's what I done.

Q Did you do that?

A Yes, sir.

Q When Mr. Eadie went to the West Wing, did you follow him down there?

A Yes, sir..

Q What did you observe when you got down to the West Wing by the guard's cubicle?

A Didn't see nothing.

Q You didn't see anything?

A No, sir.

Q Did you see any kind of a scuffle going on between guards and an inmate?

A Well, seen Mr. Cater and Nurse, that's all I seen.

Q Were they saying something to each other or were they hitting each other or did you see?

A No, sir, never seen nothing.

Q Did you see them remove an inmate from the West Wing to go down to the meditation cells?

A Yes, sir.

Q Did they bring him out the door into the hallway?

A I don't remember, sir. I never seen anything.

Q Did you see them taking him down the hall to the meditation cells?

A Yes, sir.

Q Where did you see them?

A Just come out the West Wing door.

Q Alright, so you saw them come out of the West Wing door?

A Yes, sir.

Q When they got out of the door, were they laying on the ground?

A No, sir.

Q Were they scuffling?

A Never seen that. There was so many men around there hardly could see anything that was going on.

Q Where were you standing?

A Towards the West Wing cubicle.

Q Well, were you inside the area next to the cubicle in the West Wing? Did you get into there?

A Yes, I went to the West Wing cubicle and I stood down there.

Q Did you go right into the cubicle?

A Yes, sir.

Q And who was there in the cubicle, do you remember?

A There was one officer Mr. Wood, I think.

Q And did you stand with Mr. Wood?

A Yes, sir.

Q Did you see Nurse and Cater in that area next to the cubicle at the time you got there?

A No, sir.

Q Why were you there?

A I was told to go up there and join Mr. Wood.

Q Had they moved Nurse out of there by the time you got there?

A Before I went in, that's the time they moved.

Q So they passed you in the hall, did they?

A No, right in the door.

Q So they passed you in the doorway? Did you wait for them all to come out or did you go in first and then they came out?

A No, they went first and I went inside with Mr. Wood.

Q Now when you came out of the West Wing into the hallway, was there any scuffling going on? Was it a quiet orderly procession of people?

A I never noticed that.

Q What did you notice?

A Just went with Nurse to the cells and I went inside. That's all I seen.

Q So you didn't see anybody hit anybody?

A No, sir.

Q You didn't hit anybody?

A No, sir.

MR. PEACOCK: Answer other counsel, please.

MR. STILWELL: No questions.

MISS GOTTSELIG: No questions.

MR. MEURIN: No questions.

THE COMMISSIONER: Just to clarify my own thinking, I believe you stated to Mr. Peacock that when you first got on the scene you observed Mr. Cater and the inmate Nuse talking, is that correct?

A That's right.

THE COMMISSIONER: Where did you observe

them doing that?

A When I was just walking into the West Wing door.

THE COMMISSIONER: Did you go directly from the West Wing door to the cubicle?

A Well, I seen there was some kind of squabble. Mr. Cater says "Mr. Ziachowski, go and get Mr. Eadie from the guard room" so I went.

THE COMMISSIONER: At the time of this scuffle, who was scuffling?

A Mr. Cater and Nurse was down there. That's what I seen.

THE COMMISSIONER: Just the two?

A Yes, yes, sir.

THE COMMISSIONER: And there was a scuffle going on at that time?

A When I left I don't know what was going on.

THE COMMISSIONER: Well, you mentioned a scuffle. When did you see the scuffle?

A When I was going into the West Wing.

THE COMMISSIONER: And who was the scuffle between?

A Mr. Cater and Nurse.

THE COMMISSIONER: Just the two of them?

A That's all.

THE COMMISSIONER: And after, as a result of that scuffle Cater told you to go to the guard room, is that right, to get Mr. Eadie?

A Yes.

THE COMMISSIONER: So all you can tell us is you observed a scuffle between Mr. Cater and inmate Nurse and on Cater's directions, you went to the guard room to obtain Mr. Eadie?

A Umm hmm.

THE COMMISSIONER: When you came back, was everything all over?

A Well, Mr. Eadie walked in and --

THE COMMISSIONER: Who was with him?

A With Mr. Eadie?

THE COMMISSIONER: Yes.

A I don't remember, sir. Just Mr. Eadie, me and Eadie walked into the West Wing, that's all I seen.

THE COMMISSIONER: Just you and Mr. Eadie?

A Umm hmm.

Q Did you go to the guard room and get Mr. Eadie?

A Yes, sir.

THE COMMISSIONER: And just the two of you came back?

A Yes, sir.

THE COMMISSIONER: You are sure of that?

A Yes, sir.

THE COMMISSIONER: And did you see Nurse after you came back with Mr. Eadie?

A Well, when I come in with Mr. Eadie, Mr. Eadie went to join Mr. Cater and Nurse and they were ready to take him out and I walked into the West Wing cubicle.

THE COMMISSIONER: And when you say "Take him out", take him out from where?

A From the West Wing to the cell.

THE COMMISSIONER: When you came back with Mr. Eadie, was Nurse just standing there with Mr. Cater?

A Umm hmm, yes.

THE COMMISSIONER: That was all that was going on?

A Yes.

THE COMMISSIONER: Thank you very much. Anything arising out of that? Thank you.

MR. PEACOCK: Thank you, Mr. Ziachowski.

A Thank you.

(Witness retires)

MR. PEACOCK: Would you call Mr. Lebrosse, please.

SIMON LEBROSSE, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Lebrosse, you are employed at the Calgary Correctional Institute, is that correct?

A Yes, sir.

Q As a Correction Officer one?

A Yes, sir.

Q How long have you been employed there?

A 10 years.

Q Were you so employed on July 20th, 1973?

A I was.

Q And you were on the day shift that day, were you?

A I was.

Q Now what was your responsibility that day at the institute?

A At the institution I was looking after the incentive pay and Alberta Health Care Insurance.

Q Did you have occasion that day to become involved in an incident involving an inmate by the name of Brian Nurse?

A Yes.

Q Could you tell us how you came to become involved in that incident?

A I was walking, after I had my lunch I was walking back to my desk. Mr. Merriam met me in the hallway and said "Come on, Sy, we have to go to the West Wing. There is likely to be a disturbance there. Come on". I turned around right then and there, followed him.

Q Were you issued any kind of a weapon?

A Well, I don't remember the exact technical name for this piece of equipment. It is not a billy in the sense that we know what a billy is, lead loaded or whatever it may be.

THE COMMISSIONER: Mr. McDonnell, would you show the witness the exhibits that we have.

A That's what I had. Only I did not have a capsule. I had no gas in mine.

Q But you were given one of these?

A I had one of these and I shoved it in my pocket.

Q Was it like the one you are looking at now?

A That's it.

Q What exhibit number is that?

A One.

THE COMMISSIONER: Who gave it to you?

A Mr. Merriam at the guard room.

THE CLERK: 36, sir.

Q MR. PEACOCK: Now you put that gas billy in your pocket, did you?

A I did.

Q And it wasn't loaded with a gas capsule?

A No capsule.

Q Did you know why you had it?

A Well, I had it, I presume that if I was going to be attacked I would have something to hit back with instead of just my fingers, my hands.

Q Alright. Now you followed Mr. Merriam down to the West Wing?

A Right.

Q And when you got there, what did you observe?

A Well, I saw inmate Nuse who stood by the, inside the West Wing but outside of the grill gate.

Q Right. Right next to the guard's cubicle?

A That's right.

Q And he was standing there and who else was there?

A Mr. Cater was there.

Q And what was going on when you got there?

A Mr. Cater asked him to remove a necklace, a bead necklace and I am not too sure whether it was a ring or a wrist deal made out of beads and he told him "This is contraband. You cannot wear it around the institution. Now take it off" and of course, Nurse refused.

Q What did he say?

A Oh, I couldn't repeat what he said. There are ladies present.

THE COMMISSIONER: There is no need to dramatize.

A Pardon?

THE COMMISSIONER: There is no need to dramatize. What did he say?

A "I will not take these fucking things off".

Q MR. PEACOCK: And what was said in reply to that?

A "Now you have been ordered to remove them. Will you or will you not remove them?"

Q What was his -

A "I will not". At that time Mr. Merriam came up and stood in front of Nurse. Mr. Eadie was on one side of Nurse and Mr. Cater was on the other side and Mr. Merriam said "Now, look, Nurse, it would be a lot better for you if you listen and take those things off. You have been ordered to do so and that is your responsibility as an

inmate around here". "I will not take this hmm off". I don't like to use the word.

Q That's fine, we know what you are saying.

A Yes.

Q And then what happened?

A The argument kept on going to the point where "Alright, then you will have to go to the hole". "It's going to take more than you God damn bastard Correction Officers to get me down to the hole and I am not going to the hole" so they said "Yes, you are going to go to the hole. You refused to obey. That's where you are going" so Mr. Merriam said "Okay", grabbed him and when they went forward, Mr. Eadie and Mr. Cater, to lay hands upon inmate Nurse, he stood back and up went the arms ready for a fight so they moved in on him. He was kicking and he was fighting so they managed to grab his arms and he went down, legs gave way, I don't know, and they picked him up from there and were hauling him towards the door.

Q Let me just interject. Up till this time, did you observe Mr. Cater punch Nurse?

A Well, he just reached quickly. I don't know, I don't think he was punching him. He was trying to grab him.

Q Did you see any blows land on Nurse?

A No, I did not.

Q Did you see anybody hit Nurse with a billy?

A Well, no, I did not.

Q Did you have your billy out?

A No, my billy was still in my pocket.

Q Did you ever have it out that day?

A I did take it out because I thought, well, if it is going to come I will be ready.

Q Did it come?

A And then I shoved it back into my pocket because by this time they had secured his arms and they were carrying him and he was not going through that hmm door.

Q Before he got to the door, did you swing your billy at him?

A No.

Q Did you hit him with your billy?

A No, I did not.

Q You took it out and put it back in your pocket?

A That's right.

Q When they got him to the door, what happened?

A Well, his feet left from under him. I don't know, he may have been tripped forward and a couple of Correction Officers came, grabbed him by the legs, lifted him up and he went through the door. He went back onto his feet as soon as he cleared the door and from then on, we had no more trouble. He proceeded to the hole.

Q Did you see Mr. Merriam shoot a shot of gas from a mini streamer?

A That's the word I was looking for, mini streamer.

Q I see.

A The one I had forgotten. Mr. Merriam while the arms

were flaying all over the place, reached in and psst, gave him a shot hoping to subdue the man because we had a lot of inmates behind the grill and we could have had a lot of trouble. The sooner we got rid of him in the lead the better.

Q Alright. Now did you help escort Nurse from there down to the cell block?

A I followed. Because there were quite a few of us, I merely followed the others and by this time Nurse was no longer in a fighting mood his arms were pinned behind his back and he was walking down the corridor over to the cell block.

Q I see. Now during this entire episode did you see any Correction Officers strike Nurse?

A No, sir.

Q Did you see him hit in the face?

A No.

Q Did you see any of the Correction Officers kick him?

A No, not the Correction Officers. He was doing a lot of kicking but the Correction Officers weren't kicking back.

Q Do you recall if anybody that day had a pair of cowboy boots on?

A I can't remember that.

Q When they got him down to the cell block, did he go into the cell without any trouble?

A When we got down to the bottom of the stairs leading to

the hallway to the dark cells, Nurse stood there and they said "Okay, will you take off your clothes or shall we take them off for you" and he said "I will take them off." Fine. Everybody backed off, let him strip and he was lead to the cell. The door was shut and that was the end of the episode.

Q And you went back to work?

A I did.

MR. PEACOCK: I believe those are all the questions I have. Would you answer other counsel, please.

MR. STILWELL: No questions.

THE COMMISSIONER: Miss Gottselig?

MISS GOTTSELIG: No questions.

MR. MEURIN: No questions.

THE COMMISSIONER: Can you tell me this, you put the billy in your pocket when you received it from Merriam at the guard room?

A I did.

THE COMMISSIONER: Can you just tell me when you withdrew it from your pocket?

A Well, when the scuffle started I thought I better have my billy, might have to use it. When I found out I didn't have to use it, I shoved it back in.

THE COMMISSIONER: How long did you have it exposed or in your hand?

A Perhaps half a minute.

THE COMMISSIONER: And did you put it back after Nurse went out the door?

A No, it went back because I thought I was going to have to make a grab for a leg to help Nurse through the door so I had my billy back into my pocket, didn't use it.

THE COMMISSIONER: Before he went out the door?

A That's right.

THE COMMISSIONER: Did you see anyone else there with a billy club?

A Well, Mr. Merriam had one of those.

THE COMMISSIONER: A billy club or a mini streamer? Which is it?

A The mini streamer. Mr. Merriam had one and I had one.

THE COMMISSIONER: You had a mini streamer too?

A Yes but I did not have a gas capsule.

THE COMMISSIONER: Oh, I see.

A Mine was empty.

THE COMMISSIONER: It wasn't a canister that he had but a gas billy, is that it?

A No, it was a mini streamer.

THE COMMISSIONER: Let me see that. Would you show me what Mr. Merriam had, please.

A There are two different sizes.

THE COMMISSIONER: Which one do you think he had? Well, let's be clear on which one you had.

A I had a long one.

THE COMMISSIONER: You had a long one?

A I had a long one.

THE COMMISSIONER: What exhibit number is that, Mr. Clerk?

THE CLERK: Exhibit number 35, sir.

A To be sure to swear the truth, I don't know exactly which one Mr. Merriam had. The one he had did have a gas capsule in it.

THE COMMISSIONER: Well, what I am trying to find out, witness, is whether he had that or a canister.

A No, he had one of these.

THE COMMISSIONER: Alright. Anything arising out of that, gentlemen?

CROSS-EXAMINATION BY MR. MEURIN:

Q Is there a canister there, sir, in the exhibits?

THE CLERK: Yes.

MR. MEURIN: Sir, the clerk is showing you a mini streamer. Could that be what Mr. Merriam had?

A He loaded it into something. It had to be one of those.

Q Well, sir, have you personally had training with gas yourself?

A No.

Q You haven't?

A That's why I was glad I didn't have a capsule in mine. I wouldn't have known how to use it.

Q My understanding is that with the billy clubs once the gas is started you can't shut it off, whereas, the mini streamers you can give a little spray and stop. Now do you know whether my statement is correct or not?

A I don't know.

Q In any event, all Mr. Merriam did was give a little shot and then the gas was turned off?

A That's it. I didn't even smell the stuff. Couldn't have been much of it.

MR. MEURIN: No further questions.

MR. PEACOCK: Thank you, Mr. Lebrosse.

(Witness retires)

MR. PEACOCK: Would you call Mr. Anaka, please.

DENNIS ELI ANAKA, having first been duly sworn, examined by Mr. Peacock, testified as follows:

Q Mr. Anaka, are you an employee of the Calgary Correctional Institute?

A Yes, sir.

Q And what is your position there?

A I am a social worker.

Q And how long have you been employed as a social worker at the Calgary Correctional Institute?

A Since March of this year.

Q Were you on duty on July 20th, 1973?

A Yes, sir.

Q And do you have an office in the institute?

A Yes, outside of security.

Q That would be in the front part?

A Yes, sir.

Q That day did you become involved in an incident involving an inmate by the name of Brian Nurse?

A No, sir.

Q Do you recall going to the West Wing at around noon that day?

A I don't know what time it was but I did go to the West Wing, yes, sir.

Q And what did you observe when you were there?

A When I got there they were starting to move prisoners out of the West Wing designating them to different wings.

Q And are you aware that prior to your getting there there had been a disturbance with one inmate?

A No, sir.

Q Did you witness a scuffle between Mr. Merriam and Mr. Cater and Mr. Eadie and an inmate by the name of Brian Nurse that day?

A No, sir.

Q Did you have anything to do or any contact with Brian Nurse that day?

A No, sir.

Q Did you see him that day?

A I don't recollect seeing him. I didn't know one inmate

from the other.

Q You weren't involved in any kind of an altercation to endeavour to get Brian Nurse moved out of the West Wing around noon?

A No, sir.

Q And you didn't observe anything of that sort?

A No, sir.

MR. PEACOCK: Those are all the questions I have, thank you.

THE COMMISSIONER: I would think so. Thank you very much.

A May I have permission to stay, sir?

MR. PEACOCK: I don't know what you are staying for, Mr. Anaka; I think we are finished for the afternoon. I wonder if we could adjourn for five minutes. I would like to speak to other counsel.

THE COMMISSIONER: Fine.

(Inquiry adjourned)

MR. PEACOCK: Mr. Commissioner, that is the evidence with the exception of Mr. Wood, who is presently disabled, with respect to this incident. We will adjourn and reconvene at 10:00 o'clock Monday morning at which time we will have witnesses here for the next incident.

THE COMMISSIONER: Thank you, Mr. Peacock. Till Monday morning at 10.

(Inquiry adjourned)